

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER JOHN WILSON,

Plaintiff,

v.

OFFICER SHARPS, *et al.*,

Defendants.

Case No. 1:21-cv-01651-CDB (PC)

ORDER GRANTING EX PARTE
MOTION FOR LEAVE TO FILE EARLY
MOTION FOR SUMMARY JUDGMENT
AND TO EXTEND TIME TO RESPOND
TO COMPLAINT

(Doc. 32)

Plaintiff Christopher John Wilson is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action filed under 42 U.S.C. § 1983. On August 28, 2023, the assigned district judge adopted the findings and recommendations of the undersigned that the action proceed on Plaintiff's claims in the operative First Amended Complaint (FAC) for Eighth Amendment excessive force against Defendants Sharp and Ward. (Docs. 25, 30). Summonses were issued and on August 30, 2023, Defendants waived service, thereby setting October 9, 2023, as their deadline for responding to the FAC. (Doc. 31).

Pending before the Court is Defendants' motion for leave to file a pre-answer motion for summary judgment on Plaintiff's failure to exhaust administrative remedies and for an extension of time to respond to the complaint. (Doc. 32). In support of the motion, counsel for Defendants attests that through researching the claims advanced in Plaintiff's FAC, he determined that

Plaintiff “likely did not exhaust his administrative remedies.” (*Id.* at 7, ¶ 5). Defendants argue that granting their motion will serve the interests of judicial and litigation efficiency and economy by potentially disposing of the action at an early stage, saving the parties and the Court time and resources. (*Id.* at 5-6).

Defendants’ requested relief is consistent with the Court of Appeals’ direction that exhaustion be adjudicated through a motion for summary judgment. *See Albino v. Baca*, 747 F.3d 1162, 1166, 1168, 1170 (9th Cir. 2014) (en banc). Accordingly, for good cause shown, the Court shall grant Defendants’ motion *ex parte*.

Conclusion and Order

Accordingly, it is hereby ORDERED that:

1. Defendants’ motion for leave to file a pre-answer motion for summary judgment on Plaintiff’s failure to exhaust administrative remedies and for an extension of time to respond to the FAC (Doc. 32) is GRANTED;
2. Defendants shall file any pre-answer motion for summary judgment no later than November 16, 2023;
3. Plaintiff shall file an opposition or statement of non-opposition to Defendants’ motion for summary judgment within 30 days of its filing;
4. Defendants shall file any reply in further support of their motion for summary judgment within 14 days of the filing of Plaintiff’s opposition; and
5. In the event any portion of Plaintiff’s action survives Defendants’ motion for summary judgment, Defendants shall respond to Plaintiff’s FAC within 21 days of the assigned district judge’s order on Defendants’ motion for summary judgment.

IT IS SO ORDERED.

Dated: **October 5, 2023**


UNITED STATES MAGISTRATE JUDGE